

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

A&T YARD SERVICE, INC.
Plaintiff,

vs.

**STATE AUTOMOBILE MUTUAL
INSURANCE COMPANY AND
SHERRI KING**
Defendant.

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Civil Action Number

DEFENDANT STATE AUTO'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant State Automobile Mutual Insurance Company files this Notice of Removal pursuant to 28 U.S.C. §1446(a), and would respectfully show as follows:

I.
INTRODUCTION

1. Plaintiff is A&T Yard Service, Inc. ("Plaintiff"); Defendant is State Automobile Mutual Insurance Company ("State Auto"). Plaintiff also sued Sherri King, but has since non-suited its suit against Sherri King. An Index of Documents filed in State Court is attached as Exhibit "A". Plaintiff and State Auto are now the only parties. *See* Plaintiff's Notice of Non-Suit, attached as Exhibit "A-7" and Plaintiff's Original Petition, attached as Exhibit "A-3".

2. On March 6, 2015, Plaintiff filed Cause No. 38066, *A&T Yard Service, Inc. v. State Automobile Mutual Insurance Company and Sherri King*, in the 223rd Judicial District Court of Gray County, Texas ("State Court Action"). *See* Exhibit "A-3". Plaintiff's suit alleges breach of contract, violations of the Texas Insurance Code, Chapters 541 and 542, violations of the Texas Deceptive Trade Practices Act, and Common Law Bad Faith relating to storm damage allegedly suffered at Plaintiff's home located in Gray County, Texas. *See* Exhibit "A-3".

3. State Auto was served with the suit on March 13, 2015. *See* Exhibits “A-5” and “A-8” and the Affidavit of Sherri King, attached as Exhibit “B”. State Auto files this notice of removal within the 30-day time period required by 28 U.S.C. §1446(b). *Bd. of Regents of Univ. of Tex. Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007). State Auto filed an Answer in the 223rd District Court of Gray County on April 3, 2015. *See* Exhibit “A-10”.

4. Plaintiff named Sherri King as a Defendant in this case, but has non-suited Ms. King. *See* Exhibit “A-7”. Further, Plaintiff has not filed any amended pleadings and no additional parties have been joined. The State Court’s Docket Sheet is attached as Exhibit “A-11”.

II.

REMOVAL BASED ON DIVERSITY JURISDICTION

5. Pursuant to 28 U.S.C. §1332(a), State Auto removes this case as it involves a controversy between parties of diverse citizenship and an amount in controversy that exceeds \$75,000.

6. Plaintiff is a corporation organized under the laws of Texas with its principal place of business located in Gray County, Texas. *See* Exhibit “A-3”. State Auto is a foreign corporation, organized under the laws of the state of Ohio with its principal place of business located at 518 E. Broad Street, Columbus, Ohio 43215. *See* Exhibit “B”.

7. Additionally, the amount in controversy exceeds \$75,000, excluding interest and costs. 28 U.S.C. §1332(a). Plaintiff’s Original Petition seeks “monetary relief over \$200,000.00, but not more than \$1,000,000.00.” *See* Exhibit “A-3”.

8. State Auto is the only defendant remaining in this action, therefore no consent is needed for the removal of this case to federal court.

9. Copies of all pleadings, process, orders, and other filings in the State Court Action are attached to this notice as Exhibits “A-1” through “A-11”, as required by 28 U.S.C. §1446(a).

10. Venue is proper in this District under 28 U.S.C. §1441(a) because the state court where the suit has been pending is located in this District and within this Division.

11. State Auto will promptly file a copy of this notice of removal with the clerk of the court in the pending State Court Action.

12. In accordance with Northern District Local Rule 81.1, a separately signed Defendant's Certificate of Interested Persons is attached as Exhibit "C".

III.
JURY DEMAND

13. A jury was requested by both Plaintiff and Defendant State Auto in the State Court Action. *See* Exhibit "A-3", "A-4", and "A-10".

IV.
PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant State Auto prays that this case be removed to the United States District Court for the Northern District of Texas, Amarillo Division, and that further proceedings in the State Court Action be discontinued, and that this Court assume full jurisdiction over such action as provided by law.

Respectfully submitted,

/s/Sterling Elza
Sterling Elza
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STATE AUTOMOBILE MUTUAL
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was served upon the Plaintiff, by serving counsel of record, Matthew R. Pearson, Gravely & Pearson, LLP, 425 Soledad, Suite 600, San Antonio, Texas 78205, via fax and certified mail, return receipt requested, on this the 13th day of April, 2015.

/s/ Sterling Elza
Sterling Elza